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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF OHIO  
4 WESTERN DIVISION  
5  
6

7 WALTER W. THIEMANN, :  
8 On Behalf of Himself :  
9 And of All Others :  
10 Similarly Situated, :  
11 Plaintiff, :

VS.

CASE NO. C-1-00-793

12 OHSL FINANCIAL :  
13 CORPORATION, et al., :  
14 Defendants. :

15 Deposition of MARK WEISS, ESQ., a  
16 witness herein, called by the plaintiff for  
17 cross-examination pursuant to the Federal Rules  
18 of Civil Procedure, taken before me, Lee Ann  
19 Williams, a Registered Professional Reporter  
20 and Notary Public in and for the State of Ohio,  
21 at the offices of Gene Mesh & Associates, 2605  
22 Burnet Avenue, Cincinnati, Ohio 45219, on  
23 Friday, August 22, 2003, at 9:00 a.m.  
24  
25

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1 accounts?

2 A. Institution -- large accounts,  
3 wealthy individuals.

4 Q. Okay. High net worth individuals?

5 A. Yes.

6 Q. Okay. So your job for that year  
7 was to make phone calls to high net worth  
8 individuals to attempt to get their business;  
9 is that correct?

10 A. That's a lot of what I did. But I  
11 also serviced existing high net worth and also  
12 worked on other special projects.

13 Q. Okay. What were some of the  
14 special projects that you worked on?

15 A. Sometimes states or other  
16 organizations solicit what are called RFPs,  
17 request for proposal, where they request  
18 information from prospective investment  
19 advisors who will receive a fee for their  
20 services. And I did complete some of -- some  
21 RFPs on behalf of potential institutional  
22 clients.

23 Q. During this year, were you working  
24 as an attorney?

25 A. No.

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1 Q. Was there a legal component to  
2 your job?

3 A. No. At Coutrywide, no.

4 Q. Why did you leave Coutrywide?

5 A. I was unhappy at Coutrywide.

6 Q. And you returned to the Keating  
7 firm in approximately 1998; is that correct?

8 A. It was late '97.

9 Q. Late '97. And to what department  
10 or practice group did you return?

11 A. You could say I filled my old job.

12 Q. Okay. What were your duties and  
13 responsibilities with respect to the  
14 OHSL-Provident merger?

15 A. I was the main coordinator of the  
16 registration statement -- of the form S-4  
17 registration statement. And I represented  
18 Provident in that capacity.

19 Q. When you say you represented  
20 Provident, which Provident entity did you  
21 represent?

22 A. Provident Financial Group.

23 Q. What, if any, responsibility did  
24 you have for the proxy statement?

25 A. None.

1 Q. Who had primary responsibility at  
2 Keating for the proxy statement?

3 A. Nobody at Keating had primary  
4 responsibility for the proxy statement. That  
5 was an OHSL document.

6 Q. Please take a look at what has  
7 been previously marked as Defendant's Exhibit

8 1. Have you seen that document before?

9 A. Is this the final?

10 Q. Yes.

11 A. Then yes.

12 Q. Are you familiar with that  
13 document?

14 A. As familiar as I can be with a  
15 transaction that occurred four years ago.

16 Q. What is Defendant's Exhibit 1?

17 A. It is a proxy statement/prospectus  
18 relating to the proposed merger of Provident  
19 Financial and OHSL.

20 Q. And whom do you believe is  
21 ultimately responsible for the accuracy of the  
22 information contained within that proxy  
23 statement and registration statement?

24 A. I think multiple people are  
25 ultimately responsible for the information in

1 this proxy statement/prospectus.

2 Q. Okay. Can you tell me who?

3 A. With respect to the financial  
4 information, that would be the accountants.  
5 With respect to the OHSL information, that  
6 would be OHSL, their advisors and their  
7 attorneys. And with the Provident information  
8 it would be Provident, their attorneys and  
9 their advisors. With McDonald, it would be  
10 McDonald's -- it would be the financial  
11 advisor's responsibility.

12 Q. Is it fair to say that the  
13 document consists of information received from  
14 a variety of sources?

15 A. Yes, many of which were publicly  
16 available at the time.

17 Q. And were you the person assigned  
18 with the ministerial task of collecting the  
19 information and assembling it into Defendant's  
20 Exhibit 1?

21 A. Yes.

22 Q. What, if anything, did you do to  
23 determine the veracity of the information you  
24 received from OHSL and its advisors?

25 A. I had conversations with people

10 (Pages 34 to 37)

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1 responsibilities as you understood them on  
 2 August 2nd, 1999, with respect to this merger?  
 3 MR. BURKE: Objection. Asked and  
 4 answered.  
 5 A. I couldn't put it any better than  
 6 you put it at the beginning. I was the  
 7 ministerial compiler of the document.  
 8 Q. Okay. Does that mean that you  
 9 exercised no professional judgment in the  
 10 entire transaction?  
 11 A. I would say that, that I also  
 12 represent Provident and, and in that capacity I  
 13 would have advised Provident on how to disclose  
 14 certain things.  
 15 Q. And did you, in fact, do that?  
 16 MR. BURKE: Objection. Calls for  
 17 attorney-client communications.  
 18 A. I don't recall.  
 19 Q. Okay. Let's take a look at  
 20 Plaintiff's Exhibit 42. There should be a copy  
 21 for you in this pile.  
 22 A. What is that?  
 23 Q. It's a cover letter August 17th,  
 24 1999.  
 25 A. Okay.

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1 Q. Okay. Have you seen that document  
 2 before?  
 3 A. Have I seen the document before?  
 4 Q. Yes.  
 5 A. I mean, I, I signed this letter on  
 6 August the 17th, 1999. I mean, I'm assuming I  
 7 saw it during that time.  
 8 Q. And on or about August 17th, 1999,  
 9 was it your intention to disseminate this  
 10 letter and the attachment to the distribution  
 11 list?  
 12 A. Yes.  
 13 Q. What was the purpose of doing  
 14 that?  
 15 A. For all parties who had any  
 16 information regarding this transaction to  
 17 review the materials contained in the draft and  
 18 contact Mark Reuter or me with questions and  
 19 comments in preparation for filing of the  
 20 document.  
 21 Q. Okay. Did there come a time when  
 22 you received questions and comments back?  
 23 A. I received numerous comments back  
 24 from different parties.  
 25 Q. Okay. Let's take a look at

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1 Plaintiff's Exhibit 16.  
 2 A. Okay.  
 3 Q. Have you seen that document  
 4 before?  
 5 A. I don't recall seeing it, but I  
 6 mean, I must -- I assume I did.  
 7 Q. When you received the document  
 8 like this, was it your practice to distribute  
 9 this to the service list?  
 10 A. When I receive a document like  
 11 this, it is generally my practice to make the  
 12 changes and then distribute it to the working  
 13 group for verification, in particular the  
 14 people who had submitted the comments.  
 15 Q. And to the best of your  
 16 recollection, is that what you did in this  
 17 case?  
 18 A. Well, to the best of my  
 19 recollection, I -- prior correspondence talked  
 20 about filing during the week of August 23rd. I  
 21 would not have -- unless I got sign-off from  
 22 Dinsmore & Shohl on behalf of OHSL, I would not  
 23 have authorized that Provident file the  
 24 document or -- you know, I don't know that I  
 25 even -- I don't really authorize it, Provident

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1 authorizes it, but we would have gotten --  
 2 Provident would have gotten sign-off from them  
 3 before filing the document.  
 4 Q. How does this process of sign-off  
 5 work?  
 6 MR. BURKE: Objection. Asked and  
 7 answered.  
 8 A. We talked about that earlier.  
 9 It's just -- it's everyone involved who  
 10 contributed to this says that they are -- that  
 11 they sign off on the document and it could be  
 12 filed as, as presented to them.  
 13 Q. But it's not a written sign-off,  
 14 it's an oral communication, correct?  
 15 A. Yes, in practice it is an oral  
 16 communication. There may be occasions when  
 17 there's a written communication, but my  
 18 practice is it's generally oral.  
 19 Q. Okay. Let me direct your  
 20 attention to page 48 of the document.  
 21 A. Okay.  
 22 Q. Do you see where it says, Number  
 23 of directors?  
 24 A. Yes.  
 25 Q. And for OHSL, it says, The OHSL

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1 involved in the transaction. And I circulated  
2 multiple drafts to everyone involved allowing,  
3 in this case in particular, ample time to  
4 review and verify the information.

5 Q. Do you believe that KMK and/or  
6 Provident had a duty to verify the information  
7 they received from other sources?

8 MR. GILLIGAN: In this  
9 transaction?

10 Q. Yes.

11 A. I only believe that Provident and  
12 KMK had a duty to point out any known  
13 deficiencies in the document, but not to  
14 independently verify information from different  
15 sources. I've never -- I've never even been  
16 asked to look at accountants' papers, for  
17 example, but in order to verify information  
18 statements, that's what I would have to do.

19 Q. Do you believe that you had any  
20 independent responsibility to verify the truth  
21 of written information, other than financial  
22 information, that you received from OHSL and  
23 their financial advisors?

24 MR. BURKE: Objection. Asked and  
25 answered. You may answer.

1 Q. Okay. The concept of getting the  
2 information from the law firm to the printer  
3 and ultimately to the shareholders?

4 A. Sending it to the printer.

5 Q. Okay. Now, I understand that  
6 because of electronic advances and such, this  
7 is a very different process from the way it  
8 used to be. Is that fair to say?

9 A. Yes.

10 Q. How did Defendant's Exhibit 1 get  
11 from -- get to the financial printer?

12 A. Physically?

13 Q. Yes. How did the information in  
14 Defendant's Exhibit 1 get to the financial  
15 printer?

16 A. The document was hand delivered, I  
17 believe, to Winkler Printing, who, through a  
18 process known as camera ready copy, reproduced  
19 the document.

20 Q. Who delivered the document to the  
21 financial printer?

22 A. I don't remember.

23 Q. Was it someone from KMK?

24 A. I don't remember.

25 Q. Who had the final say as to when

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1 A. Do I, Mark Weiss?

2 Q. Mark Weiss or KMK or Provident.

3 A. I restate my answer. I think our  
4 only obligation was to -- we certainly could  
5 not inflict ourselves in the OHSL -- in the  
6 OHSL corporate matters. To the extent that we  
7 may have known of something in particular that  
8 was deficient, we would have had a duty to  
9 point that out, but I don't think we have a  
10 duty to scrub everything, no.

11 Q. When you said "deficient," how did  
12 you mean that?

13 A. Wrong.

14 Q. Materially false and misleading?

15 A. Wrong.

16 Q. Just factually wrong?

17 A. Correct.

18 Q. Have you heard the term take the  
19 document to the printer, or a similar term?

20 A. Similar term, yes.

21 Q. Okay. What term have you heard  
22 with respect to this concept?

23 MR. BURKE: What concept? Object  
24 to form, vague and ambiguous.

25 A. Yes, what concept?

1 the document was finalized?

2 A. Everybody.

3 Q. What individuals are you referring  
4 to?

5 A. I'm not -- I'm not referring to  
6 individuals. I'm referring to the -- the  
7 document wasn't complete until we had sign-off  
8 from everyone, OHSL and their counsel, the  
9 accountants, McDonald & Company, Provident.

10 Q. And KMK?

11 A. In our representation of  
12 Provident.

13 Q. Describe for me, if you will, this  
14 sign-off procedure.

15 A. I don't recall the sign-off  
16 procedure in this case. Generally -- generally  
17 I -- if I am the, as you say, ministerial  
18 keeper of the document, I will or someone from  
19 my office will be in contact with all of these  
20 parties. And they will give an oral sign-off.

21 Q. Did this document come from KMK's  
22 computer system?

23 A. The document that was printed?

24 Q. Yes.

25 MR. GILLIGAN: Exhibit 1.